SUPREME COURT, U. S.

FIL

DEC

No. 73-915

In the

# Supreme Court of the United States

OCTOBER TERM, 1973

JUAN MORAN,

*Petitioner,*

*vs.*

THE RAYMOND CORPORATION,

*Respondent.*

## BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This Brief in Opposition to a Petition for a Writ of Certiorari is respectfully submitted on behalf of respondent, The Raymond Corporation, a corporation, defendant-appellant below.

## OPINION BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 484 F.2d 1008.

## JURISDICTION

The jurisdictional requisites are set forth in the Petition.

## QUESTIONS PRESENTED

1. Whether under the particular facts and circumstances appearing of record in the instant matter, the Court of Appeals was empowered to examine the sufficiency of the evidence presented to support the verdict.

2. Whether a Court of Appeals upon finding the evidence insufficient to support a jury verdict may reverse a judgment of the District Court entered upon the said verdict after denial by the District Court of appropriate motions for directed verdict and post-trial relief.

## STATEMENT OF THE CASE

Respondent adopts the statement of the case, which appears in the opinion of the United States Court of Appeals for the Seventh Circuit decided on September 14, 1973, and written by Circuit Judge Pell on behalf of a unanimous court. (484 F.2d 1008) Said statement adequately sets forth the factual circumstances surrounding plaintiff's cause of action for personal injury in this diversity case.

As one of the issues presented here, however, is the power of the Court of Appeals to review this matter, respondent states at greater length the circumstances surrounding the motions presented to the trial judge for directed verdicts and post-trial relief.

At the conclusion of plaintiff's evidence, defense counsel filed with the trial court a written motion for a

directed verdict, which motion was supported by a memorandum of law filed with the judge and served upon opposing counsel. The trial judge, Honorable Alexander J. Napoli (now deceased), upon presentation of the said motion, heard brief oral argument and then took the motion under advisement.

At the conclusion of all of the evidence, Judge Napoli requested counsel for both parties to come into chambers. In chambers, defense counsel had an off the record conversation with Judge Napoli concerning defendant's motion for directed verdict at the close of all the evidence. Defense counsel advised Judge Napoli that he had a motion for directed verdict at the close of all the evidence that he would like to have filed. Judge Napoli said he thought the case should be submitted to a jury for consideration. Judge Napoli further stated that the ruling on the motion for directed verdict at the close of all of the evidence would be the same as the ruling he had made concerning the earlier motion for directed verdict, namely, that he would take the motion under advisement and that his ruling on one would be the same as on the other.

Thus, defense counsel did not file a written motion for directed verdict at the close of the evidence.

After the jury returned its verdict, Judge Napoli discharged the jury. Plaintiff moved that judgment be entered on the verdict and defendant moved that the court rule on its motion for directed verdict. Judge Napoli refused to enter judgment on the verdict at that time as he wished to consider the pending motions which he had under advisement. He advised counsel for both parties that he would rule at a later date.

The jury returned its verdict on March 14, 1972. Judge Napoli considered the motions and memoranda that had been filed and while considering these defense motions, continued the date for ruling from time to time. Finally, on April 11, 1972, Judge Napoli denied the defense motions and entered judgment on the verdict.

A timely post-trial motion was filed on behalf of defendant. Said motion provided, *inter alia:*

> ". . . and in support of this motion, in addition to those grounds stated in the Motion for Directed Verdict *made at the close of all the evidence* . . . ." (Emphasis added.);
>
> "16. The Court erred in failing to direct a verdict for the defendant either at the close of the plaintiff's evidence or *at the close of all the evidence.*" (Emphasis added.)

Neither plaintiff nor the Court questioned, or raised any objections to, the above statements contained in the Motion for Judgment Notwithstanding the Verdict.

Counsel for plaintiff apparently recognized that a motion for directed verdict at the close of all the evidence had been made. On April 26, 1972, all parties appeared before Judge Napoli for hearing on the Motion for Judgment Notwithstanding the Verdict. At the hearing, counsel for plaintiff stated, *inter alia:*

> "Under the applicable rules, the grounds for seeking a judgment notwithstanding the verdict must be identical and not expansive over theirs which were asserted in the motion for directed verdict at the close of the plaintiff's case, *at the close of all the evidence,* and upon which the Court has ruled on the 11th of April this year."

At no time in the trial court did either the trial judge or counsel for plaintiff question whether a motion for directed verdict at the close of all of the evidence had been made. On the contrary, as the record reflects, all persons involved considered that such a motion had been made and was pending. It should be further noted that the legal issues raised by the said motion had been continually raised with Judge Napoli throughout the trial and were considered in extended conferences. Judge Napoli at all times stated that he would reserve rulings on these legal issues until a later date so that they might be given full consideration. Because of Judge Napoli's attitude reflecting this careful consideration, defense counsel considered that all legal issues had been raised and that nothing further was required to preserve the record.

For the first time in the Court of Appeals, upon review of the trial court judgment, plaintiff raised as an issue whether a motion for directed verdict was made at the close of all the evidence. As demonstrated above, the record discloses that the trial judge, plaintiff and defendant recognized that such a motion had been made and acted accordingly.

## ARGUMENT

Respondent respectfully states that there is no good reason for the Court to grant the Petition for Writ of Certiorari in this case. Although respondent, of course, desires the imprimatur of this Court upon the decision heretofore rendered by the Court of Appeals for the Seventh Circuit, respondent opposes the granting of the writ as there is no vital or important question presented to which this Court should devote itself. There is no federal question presented as regards the merits of plaintiff's cause of action in this diversity action. There is no novel question here relative to the supervision of the Courts of Appeals, nor is there any conflict of decisions among the Courts of Appeals of the various circuits on any of the issues here.

Courts of review have always had the power to consider whether evidence presented in a case tried to a jury is sufficient to support a verdict. There can be no legitimate question concerning trial by jury under the Seventh Amendment on this point.

The law applicable to this case to which the Court of Appeals addressed itself in examining the sufficiency of the evidence was the law of the State of Illinois as developed in that area of personal injury law characterized as products liability. The Court of Appeals correctly applied state law to determine the adequacy of the cause of action, the evidence in support thereof and the effects thereon of the defenses interposed thereto. This is a traditional function of reviewing courts. Although products liability law is of great interest to the

personal injury bar in Illinois and elsewhere it does not raise federal questions to which this Court customarily devotes itself.

The issue with regard to the applicability of Rule 50(b) of the Federal Rules of Civil Procedure is uniquely narrow and cannot be converted into an issue of widespread significance warranting review by this Court on certiorari.

The case concerns peculiar facts surrounding the conduct of this particular trial and the interrelationship and understandings among counsel and the trial judge with regard to presentation of motions during trial. In this regard, this case is similar to *Bayamon Thom McAn, Inc.* v. *Miranda,* 409 F.2d 968 (1st Cir., 1969) and *United States* v. *353 Cases, etc.,* 247 F.2d 473 (8th Cir., 1957), both relied upon by the Court of Appeals in finding that the circumstances here justified review of the evidence by the Court of Appeals. In each of the aforementioned cases, questions were raised as to the proper preservation of error for review. In each case, the reviewing court found on the peculiar facts before it that there was such a proper preservation and that the integrity of the judicial system and the purport of the Federal Rules of Civil Procedure which require liberal construction to the end that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action", Rule 1, F.R.C.P., mandated review.

Neither this case nor those upon which the Court of Appeals relied manifest a rule of universal applicability but merely enable a reviewing court to take cognizance of particular facts in applying the Rules in a given circumstance.

The Court of Appeals, of necessity, found that the trial judge was well aware of the legal arguments asserted by defendant to defeat plaintiff's cause of action, that these arguments had been continually raised at all phases of the trial and that, from the record, it appeared that there was no question in anyone's mind that the substance of all necessary motions which were a predicate for review had been made.

This case, just as those upon which the Court of Appeals relied, preserves intact the validity, vitality and requisites of Rule 50(b). In such circumstances, there is no need for further review. The particular application of the Rule under the facts of this case does not convert the correct decision of the Court of Appeals into an important or universal question concerning the Federal Rules of Civil Procedure.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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